

Ordinance No. 12-07 ORDINANCE: To amend Chapter 10.5 of the Rockville City Code, entitled “Forest and Tree Preservation” to add a new definition for “afforestation level,” modify the definitions of “forest” and “specimen tree,” and make certain other amendments to the definitions in Chapter 10.5; to modify the criteria for forest stand delineations and forest conservation plans; to generally amend the provisions pertaining to the retention of existing forest cover and individual significant trees, including requiring, with certain exceptions, the retention of forest and trees in priority retention areas, establishing conditions under which clearing may occur within priority retention areas, and establishing the conditions for satisfying retention requirements in non-priority areas; to amend the exemptions from the afforestation requirements so as to limit the single record lot exemption to residential lots only and to exempt certain linear projects, as defined by the State Forest Conservation Technical Manual, and make certain other amendments to the afforestation requirements; to establish a preferred sequence and priorities for tree replacement requirements in addition to reforestation and afforestation requirements; to eliminate the option of satisfying tree replacement, reforestation, and afforestation requirements with off-site plantings; to modify the provisions pertaining to payment of a monetary amount in lieu of on-site tree replacement, reforestation, and afforestation; to require that the forest conservation maintenance agreement require eradication and control of exotic/invasive plants and to provide for the extension of the maintenance period under certain circumstances; to amend the provisions pertaining to inspections; to modify the provisions pertaining to the issuance of a stop work order, to make certain other clarifying modifications and amendments; and to

otherwise generally amend Chapter 10.5 of the Rockville City Code.

WHEREAS, in 1992 the Mayor and Council of Rockville first adopted Chapter 10.5 of the Rockville City Code, entitled “Forest and Tree Preservation;” and

WHEREAS, since the adoption of Chapter 10.5 the Mayor and Council has directed staff to implement Chapter 10.5 so as to minimize the loss of existing urban forest and tree cover; and

WHEREAS, consistent with the direction and policy of the Mayor and Council, it has been staff’s practice to meet the goals and requirements of Chapter 10.5 through maximum feasible on-site forest and tree preservation and planting; and

WHEREAS, the Mayor and Council desires to further amend and clarify Chapter 10.5 so as to strengthen its forest and tree preservation policy and goals, and to codify and affirm staff’s practices in furtherance of those policies and goals.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND that Chapter 10.5 of the Rockville City Code, entitled “Forest and Tree Preservation” be amended to read as follows:

ARTICLE I. IN GENERAL

Sec. 10.5-1. Purpose.

The purpose of this chapter is to:

- (1) Encourage the preservation and enhancement of Rockville's urban forests.
- (2) Replace tree cover in non-forest areas within the City.
- (3) Establish procedures, standards and requirements that protect trees and forests during and after development activity and minimize tree loss due to development activity.
- (4) Establish procedures, standards and requirements for afforestation and reforestation of land within the City.
- (5) Meet the requirements of the Natural Resources Article, Sections 5-1601 through 5-1613 of the Annotated Code of Maryland.

Sec. 10.5-2. Scope.

Except as otherwise provided, this chapter applies to all applications for a covered permit or covered approval as defined in section 10.5-5 of this chapter made on or after January 1, 1993.

Sec. 10.5-3. Interpretation.

(a) All references in this chapter to provisions of the Annotated Code of Maryland shall refer to the provisions as they currently exist and as they may be amended.

(b) References to COMAR are to the Code of Maryland Regulations and refer to the referenced provisions of those regulations as they currently exist and as they may be subsequently amended.

(c) The provisions of this chapter shall be interpreted and applied in conjunction with the specifications and clarifications contained in the Forest Conservation Manual.

Sec. 10.5-4. Administration.

(a) The Mayor and Council. The Mayor and Council shall:

(1) Establish by resolution fees to cover the cost of administering this chapter;

(2) Adopt by resolution a Forest Conservation Manual which shall meet the minimum requirements of the State Forest Conservation Manual and shall include, but not be limited to:

a. standards for preparing and evaluating a Forest Stand Delineation;

b. standards for preparing and evaluating a Forest Conservation Plan, including priorities for retention, reforestation and afforestation;

c. a recommended tree species list;

d. forest and tree protective measures to be provided prior, during and after clearing or construction;

e. other standards, requirements, and clarifications consistent with this chapter.

(b) The City Manager. The City Manager, through the City Forester and other authorized designees shall:

(1) Administer the provisions of this chapter and the City's Conservation Manual.

(2) Prepare and submit the reports to the Senate Environmental Affairs Committee and the House Environmental Matters Committee required by Natural Resources Article, Section 5-1613 of the Annotated Code of Maryland.

(3) Develop procedures and policies necessary to administer this chapter.

(c) The City Forester. The City Forester, or such other individual or individuals as may be designated by the City Manager shall:

(1) Review and approve or disapprove Forest Stand Delineations and Forest Conservation Plans, and other submissions, as provided for by this chapter;

(2) Interpret and apply the standards of the Forest Conservation Manual;

(3) Develop technical standards and specifications for forest and tree protective measures and planting of trees and forests;

(4) Inspect development activity to determine compliance with approved conservation plans and the provisions of this chapter;

(5) Issue tree removal permits in accordance with section 10.5-32 of this chapter;

(6) Assess fines and administrative penalties pursuant to section 10.5-34.

Sec. 10.5-5. Definitions.

For purposes of this chapter and the Conservation Manual, the following words, terms and phrases shall have the meaning respectively ascribed to them as set forth below. Any word, term, or phrase not defined herein or in the Conservation Manual shall have the meaning ascribed to them in state law or regulation.

Afforestation means the establishment of tree cover on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

Afforestation level is the [[minimum]] percentage of a site that is required to be forested [[amount of tree or forest cover required for a site]] based on the zoning.

Applicant means a person who applies for a covered permit or approval as defined in this section.

Approval or approved when referring to the approval of a Forest Stand Delineation, or a Forest Conservation Plan, (including a preliminary conservation plan), means the approval of said delineation or plan by the City Forester.

Board of Appeals means the Board of Appeals created by Chapter 25 of this Code.

Break-even point means the point at which forest conservation requirements can be met solely through forest retention.

Caliper means the diameter measured in inches measured at two (2) inches above the root collar.

Champion tree means the largest tree of its species within the United States, the State, county, or municipality.

City means the City of Rockville

Conservation Manual means the City's Forest Conservation Manual as defined in this section.

Conservation Plan means a Forest Conservation Plan as defined in this section.

Covered activity means any of the following activities occurring in connection with a tract within the City:

- (1) Subdivision of land.
- (2) An activity that requires a grading and sediment control permit;
- (3) An activity that requires a use permit or a use permit amendment;
- (4) A planned development as defined in this section.

Covered approval means approval of a subdivision (preliminary or final) or of a planned development, as defined herein.

Covered permit means a use permit, an amendment to a use permit or a sediment control permit issued by the City. A sediment control permit is required by Chapter 19 of this Code before any grading can be performed.

Critical habitat area means a critical habitat for a threatened or endangered species and its surrounding protection area. A critical habitat area is an area that:

- (1) Is likely to contribute to the long-term survival of the species;
- (2) Is likely to be occupied by the species for the foreseeable future; and
- (3) Constitutes a habitat of the species which is considered critical under Natural Resources Article, §§ 4-2A-04 and 10-2A-04, Annotated Code of Maryland.

Critical root zone means the zone in which the majority of a tree's roots lay, as calculated by the Forest Conservation Manual.

DBH means diameter in inches at breast height.

Declaration of Intent means a statement executed and recorded among the Land Records by a property owner verifying that proposed activity is either exempt or excepted, in whole or in part, from a requirement of this chapter, and shall contain the following:

(1) satisfactory assurances of limited or no additional development activity on the tract;

(2) an agreement to comply with the provisions of this chapter at such time as any additional development occurs on the property; and

(3) such other provisions deemed appropriate by the City.

Development activity means grading, excavation, or construction activities occurring on a specific tract, and includes redevelopment.

Development project completion means

(1) The release of all required bonds;

(2) Acceptance of the project's streets, utilities, and public improvements by the City;
or

(3) Designation by the City or State that a:

a. Development project has been completed, or

b. Particular stage of a staged development project has been completed.

DNR means the State of Maryland Department of Natural Resources.

Environmental Guidelines means guidelines adopted by Mayor and Council Resolution No. 11-99, as may hereafter be amended or modified, requiring identification of natural resources and the implementation of buffers and other strategies and techniques to preserve and protect the environment and to mitigate the adverse impact of development on the environment.

Forest:

(1) "Forest" means a contiguous biological community dominated by trees and other woody plants covering a land area of [ten] five thousand [(10,000)] (5,000) square feet or greater.

(2) "Forest" includes:

a. Areas that have at least one hundred (100) live trees per acre with at least fifty (50) percent of those trees having a two-inch or greater diameter at four and one-half (4.5) feet above the ground and larger; and

b. Areas that have been cut but not cleared.

(3) "Forest" does not include orchards.

Forest conservation means the retention of existing forest or the creation of new forest at the levels set by the City.

Forest conservation and management agreement means an agreement as stated in the Tax-Property Article, § 8-211, Annotated Code of Maryland.

Forest Conservation Plan means a plan providing for the protection, maintenance, replacement, reforestation, and afforestation of the forest as provided by section 10.5-13 of this chapter.

Forest Conservation Manual means the detailed document containing technical specifications and standards of performance used in the implementation of this chapter, including the preparation of Forest Stand Delineations and Forest Conservation Plans.

Forest Conservation Worksheet means a worksheet used for calculating reforestation and afforestation requirements.

Forest conservation threshold means the percentage of the tract area at which the reforestation requirement under section 10.5-22 of this chapter changes from a ratio of one-quarter (1/4) acre planted for each acre removed above the threshold to a ratio of ~~[[two (2)]]~~ three (3) acres planted for each acre removed below the threshold.

Forest cover means the area of a tract meeting the definition of forest.

Forest Stand Delineation means the methodology for evaluating the existing vegetation on a site proposed for development activity, as provided in this chapter, and the conservation manual.

Intermittent stream means a stream in which surface water is absent during a portion of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

Issuing Authority means that employee, division, department, Board, or Commission of the City authorized to issue a covered permit or grant a covered approval.

Land Records means the Land Records of Montgomery County, Maryland.

Limits of disturbance means the area within which all construction, grading, excavating, and clearing will occur.

Maintenance agreement means a short-term management agreement, for a minimum of [two (2)] five (5) years, relating to afforestation or reforestation plans required under Natural Resources Article, § 5-1605, Annotated Code of Maryland and this chapter.

Natural Resources Inventory (NRI) means a complete analysis of existing natural features, forest, and tree cover on site as further defined and described in the Environmental Guidelines.

Nontidal wetlands:

(1) "Nontidal wetlands" means an area that is:

a. Inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; and

b. Considered a nontidal wetland in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency.

(2) "Nontidal wetlands" does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland.

Offsite means outside of the limits of the area encompassed by a tract.

Onsite means within the limits of the area encompassed by a tract, including an area classified as a 100-year floodplain.

100-year floodplain means an area along or adjacent to a body of water with ground surface elevations that are inundated by the waters of the one hundred (100) year flood.

Park buffer means an area of separation that preserves the integrity of a park/recreation area by preventing physical or aesthetic encroachment from adjoining land uses, as further defined and described in the Environmental Guidelines .

Person means the federal government, the State, a county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

Planned development means a planned residential unit development, a residential townhouse development, and comprehensive planned development as set forth in Chapter 25, Article XII (Special Development Procedures) of this Code.

Priority planting areas means those areas identified in section 10.5-23(b) of this chapter as priority areas for afforestation and reforestation.

Priority retention areas means those areas identified in section 10.5-21(b) of this chapter as priority areas for forest and tree retention and protection.

Qualified Preparer means an individual qualified to prepare a Forest Stand Delineation and a Forest Conservation Plan, including a licensed Maryland forester, a licensed landscape architect, and any individual who otherwise meets the standards for a qualified professional as specified in COMAR 08.19.06.01.

Recorded lot for purposes of this chapter only means a unit of land, the boundaries of which have been established by a deed or subdivision plat recorded in the land records of Montgomery County.

Reforestation or reforested means the replacement of removed forested areas by the creation of a biological community dominated by trees and other woody plants containing at least one hundred (100) live trees per acre with at least fifty (50) percent of those trees having the potential of attaining a two-inch or greater diameter measured at four and one-half (4.5) feet above the ground, within seven (7) years; or establishment of a forest according to procedures set forth in the Forest Conservation Manual.

Retention means the deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as provided in the City of Rockville Forest Conservation Manual.

Significant tree means a champion tree, a specimen tree, or a tree located within a forest with a diameter of twenty-four (24) inches or more, a tree located outside of a forest with a diameter of twelve (12) inches or more, or a tree located within twenty-five feet of the limits of disturbance with a diameter of six (6) inches or more.

Single-family residential lot for purposes of this chapter means a lot regardless of zone, improved with a structure containing not more than one single dwelling unit. This term includes townhouses and semi-detached dwellings located on separate lots and one-family dwellings that are modified to include an accessory apartment approved by special exception. This term does not include any common area owned by a homeowner's association or similar entity.

Specimen tree means a tree with a diameter equal to or greater than thirty (30) inches or that is seventy-five (75) percent of the diameter of the state champion tree of that species.

State Forest Conservation Manual means the Forest Conservation Technical Manual prepared for the Maryland Department of Natural Resources for use in the implementation of the 1991 Forest Conservation Act, as it currently exists and as it may be subsequently amended.

Stream buffer means a strip of natural vegetation contiguous with and parallel to the bank of a perennial or intermittent stream and designed to protect the stream, as further defined and described in the Environmental Guidelines.

“Street tree” means any tree planted in the public right-of-way.

Subdivision means the division of a lot, tract or parcel of land into two (2) or more lots, plats sites, or other divisions of land or assemblage of land for the purpose, whether immediate or future, of sale, lease, transfer of ownership, or development. "Subdivision" includes resubdivision, but does not include the creation of ownership lots as that term is defined in Chapter 25 of this Code.

Tract means a property or unit of land for which an application for a covered permit or approval is filed. A tract may consist of one or more lots or parcels of land.

Tract area means the total area of a tract, including both forested and non-forested areas, to the nearest one hundred (100) square feet.

Tract for a planned development activity means the entire property subject to a planned development.

Tract, subdivision means all that property encompassed by a plat of subdivision.

Tree means a large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least twenty (20) feet at maturity.

Tree replacement means replacement of individual significant trees removed whether or not as a result of development activity.

Watershed means all land lying within an area described as a subbasin in water quality regulations adopted by the State Department of the Environment under COMAR 26.08.02.08.

ARTICLE II. FOREST STAND DELINEATION AND FOREST CONSERVATION PLANS

Sec. 10.5-11. General requirements.

(a) Except as otherwise provided this chapter or in the Conservation Manual, a person filing an application for a covered permit or approval shall submit a Forest Stand Delineation and a Forest Conservation Plan as part of, or in connection with, the application.

(b) Exceptions. The submissions referenced in subsection (a) are not required:

(1) Where an application for permit or approval is filed by the owner of a single-family residential lot in connection with construction or land disturbing activity not involving subdivision of the lot and where less than forty thousand (40,000) square feet of forest is disturbed.

(2) Where a Final Forest Conservation Plan has been approved within the preceding five (5) years in connection with the same development activity, unless the City Forester determines that there has been a significant alteration in the environment of the site or change in applicable law, policy, or regulation since the approval of the plan.

(3) For a use permit, or use permit amendment, where a sediment control permit is not required for the development activity, unless the proposed development activity shows disturbance within or adjacent to the critical root zone of significant trees or trees protected by an existing Forest Conservation Easement.

(4) Where an application for subdivision of a tract is filed for the purpose of facilitating the financing or transfer of the tract or portion thereof, and where no additional development on the tract occurs, provided that the property owner executes and records among the Land Records a Declaration of Intent and/or such other documents, acceptable in form and content to the City Forester and the City Attorney setting forth the obligation for compliance with this chapter in connection with future development of the tract.

(c) The Forest Stand Delineation and Forest Conservation Plan required by this section shall be prepared by, and exhibit the stamp/certification and signature of, a Qualified Preparer as defined in section 10.5-5 of this chapter.

(d) No application for a covered permit or approval is complete until the submissions required by this chapter are accepted as complete by the City Forester. The City Forester may accept submissions substantially consistent with the purpose of this chapter and the Natural Resources Article, Sections 5-1602 through 1612 of the Annotated Code of Maryland.

(e) All covered permits and approvals shall be issued conditioned on approval of, and compliance with a Forest Conservation Plan.

Sec. 10.5-12. Criteria for Forest Stand Delineations.

(a) A Forest Stand Delineation encompassing the entire tract, or such portion of the tract as may be approved by the City Forester, shall be used during the preliminary review of the covered permit or approval application, to determine the most suitable and practical areas for forest conservation and shall serve as the basis for a Forest Conservation Plan.

(b) A Forest Stand Delineation shall contain the following information:

(1) A completed application form supplied by the City and signed by the applicant, the property owner, and the Qualified Preparer.

(2) A site vicinity map showing the location of the site in relation to other properties within approximately one (1) square mile or more, including forested and sensitive areas adjacent to the site;

(3) An environmental features map, also known as a Forest Stand Delineation Map, exhibiting a stamp/certification and signature of the Qualified Preparer. The Forest Stand Delineation Map shall be prepared at the same scale as the proposed development plan and shall show the following:

a. One hundred (100)-year nontidal floodplains in watersheds four hundred (400) acres or larger, or for Class III streams,

b. Intermittent streams and perennial streams, including buffers required by the Environmental Guidelines.

c. Steep slopes of twenty-five (25) percent or more,

d. Critical habitat areas,

e. Nontidal or tidal wetlands, including buffers required by the Environmental Guidelines.

f. Topographic contours and intervals,

g. Hydric soils, erodible soils on slopes of fifteen (15) percent or more, and soils with structural limitations as classified by USDA soil surveys,

h. Survey location of all significant trees.

i. A significant tree summary [sheet] table identifying the species, size, and description of condition of all significant trees located on the map,

j. Identification of critical root zones extending from trees located on adjacent tracts, including the location, [and] species and condition estimate of the trees.

k. A statement noting the presence or absence of rare, threatened or endangered species.

l. A statement noting the presence or absence of cultural and/or historic resources.

(4) Such additional information required by the Conservation Manual for simplified, intermediate, and full Forest Stand Delineations; and

(5) Such other information that the City Forester or issuing authority determines is necessary to implement this chapter.

(c) The Conservation Manual shall set forth the criteria and requirements for submission of a simplified, intermediate and full Forest Stand Delineation:

(1) A simplified Forest Stand Delineation may be submitted where forest does not currently exist on the site or where existing forest will not be cut, cleared, or graded for the proposed development, and where adequate forest and tree protection devices and long-term agreement are established for the protection of existing forest and significant trees.

(2) An intermediate Forest Stand Delineation may be submitted where the forest retention on a tract will be equal or greater to the break-even point as calculated in the forest conservation worksheet and priority retention areas will not be disturbed.

(3) A full Forest Stand Delineation shall be used where a development does not qualify for a simplified or intermediate Forest Stand Delineation.

(d) The City Forester may accept a Forest Stand Delineation that substantially complies with this chapter and the Forest Conservation Manual and furthers the goals of this chapter.

(e) The submissions required by this section are in addition to any other submissions required in connection with the application for a covered permit or approval. However, if any submission required by this section duplicates the submission required by any other law or ordinance, regulation, decision, or policy, only one (1) submission of the same information is required.

(f) An approved Forest Stand Delineation may remain in effect, and serve as the basis for a Forest Conservation Plan for no longer than five (5) years, except that the City Forester may require submission of a revised Forest Stand Delineation if site conditions or applicable law or regulation change within five years of the original approval.

Sec. 10.5-13. Criteria for Forest Conservation Plans.

(a) A Forest Conservation Plan (Conservation Plan) shall be based on an approved Forest Stand Delineation and shall give priority to, and provide for, the protection and maintenance of any existing forest and significant trees within the Forest Stand Delineation Area which may be adversely affected by the proposed development activity for the tract.

(b) Where the existing forest and individual significant trees cannot be retained, the Conservation Plan shall provide for tree replacement, reforestation and afforestation in accordance with Article III of this chapter.

(c) Preliminary Forest Conservation Plan.

(1) A Preliminary Forest Conservation Plan may be submitted in connection with

- a. a preliminary plan of subdivision;
- b. an exploratory application or concept plan for a planned development ;
- c. any situation where development is anticipated to occur in stages or phases.
- d. any other situation where the City Forester deems appropriate.

(2) Requirements. A Preliminary Forest Conservation Plan shall contain the following information:

- a. The approved Forest Stand Delineation for the site drawn to scale;
- b. The applicable zone and pertinent reforestation and afforestation threshold levels.
- c. A table of area sizes for the following:
 - (i) Existing tract area, floodplain area, and forest area.
 - (ii) Proposed areas of forest and tree retention
 - (iii) Proposed areas of forest and tree removal
 - (iv) Proposed areas of reforestation and afforestation,
- d. A graphic delineation of the following areas:
 - (i) proposed forest and significant tree retention areas.
 - (ii) Proposed afforestation and reforestation areas.
 - (iii) Proposed limits of disturbance.
- e. Written justification for disturbance of priority retention areas, including the reasons why the priority retention areas cannot be retained and how disturbed priority retention areas will be replaced through afforestation and reforestation.
- f. Written justification for the proposed use and location of non-priority retention areas and of on-site and off-site afforestation, reforestation, and/or tree replacement areas.

g. Such other information as may be required by this chapter or the Conservation Manual

h. Such other information that the City Forester determines is necessary to implement this chapter.

(3) No development activity may occur on any portion of a tract covered by a Preliminary Conservation Plan without an approved Final Conservation Plan for that portion of the tract.

(4) An approved Preliminary Forest Conservation Plan shall remain in effect, and shall serve as the basis for the Final Forest Conservation Plan with respect to forest and tree retention for the duration of the validity period of the underlying approval, unless the City Forester determines that site conditions have changed to the point where the preliminary approval is no longer accurate. Notwithstanding the foregoing, all Final Forest Conservation Plans shall comply with all other aspects of this Chapter in effect at the time of the approval of the Final Forest Conservation Plan.

(d) Final Forest Conservation Plan

(1) A Final Conservation Plan must be submitted and approved prior to any development activity on a tract.

(2) A Final Conservation Plan may be submitted for a portion of the area covered by an approved Preliminary Conservation Plan, provided that any such Final Conservation Plan must include forested areas in their entirety and the boundaries of said Final Conservation Plan may not divide any forested area existing on the tract.

(3) Requirements. A Final Conservation Plan shall contain all of the following information:

a. All of the information required in subsection (c) of this section and in the Conservation Manual for a Preliminary Conservation Plan.

b. Details and specifications of protective devices and measures to be used prior to and during construction activities to protect forest and significant trees, including information pertaining to the locations, types, implementation, and maintenance of the protective measures.

c. A graphic delineation of the limits of disturbance and soil stockpile areas.

d. A critical root zone analysis, including root zones extending on the tract from adjacent property.

e. Such other information as may be required by the Conservation Manual.

f. A short-term maintenance agreement as described in section 10.5-25 of this chapter to ensure protection and satisfactory establishment of forest and individual tree plantings:

g. A long-term agreement as described in section 10.5-26 of this chapter for the protection of areas of forest conservation, including areas of afforestation, reforestation, and retention; and

h. Phasing and completion schedule for planting the required trees.

[h] i. Such other information that the City Forester determines is necessary to implement this chapter.

(4) An approved Final Forest Conservation Plan is valid for five (5) years, except that the City Forester may require submission of a revised Forest Conservation Plan if site conditions change within five years of the Forest Conservation Plan approval.

Sec. 10.5-14. Submission, review and approval; revocation.

(a) The Forest Stand Delineation shall be submitted in connection with, and in the same manner as, the application for the covered permit or approval.

(b) In conjunction with, or subsequent to, the approval of the Forest Stand Delineation, the applicant shall submit a Preliminary or Final Forest Conservation Plan.

(c) The submitted Forest Stand Delineation and Forest Conservation Plan shall be referred to the City Forester for review.

(1) The City Forester's review shall be concurrent and coordinated with other aspects of the review of the application for the covered permit or approval so as to maximize conservation and minimize tree loss.

(2) The City Forester may require additional information and /or modifications, approve, approve with conditions, or disapprove the Forest Stand Delineation and the Conservation Plan.

(3) The submission of the Forest Stand Delineation or Forest Conservation Plan shall not be complete until all information required by this chapter, the Forest Conservation Manual, and such other information as may be required by the City Forester is received by the City Forester.

(4) If the City Forester fails to approve, disapprove, or request additional information and/or modifications to the Forest Stand Delineation within thirty (30) days after its completed submission or resubmission, or the Forest Conservation Plan within forty-five (45) days of its completed submission or resubmission, the Forest Stand Delineation or Conservation Plan shall be deemed to be approved.

If the Forest Conservation Plan is submitted along with the Forest Stand Delineation, the City Forester shall have forty-five (45) days from the approval of the Forest Stand Delineation to review and approve, disapprove or require additional information and/or modifications to the Conservation Plan. The City Forester may extend the review period for an additional fifteen (15) calendar days, or for a longer period if agreed to or requested by the applicant.

(5) The City Forester may:

a. Require changes and modifications to the Forest Stand Delineation and/or the Conservation Plan as a condition of approval.

b. Approve changes and modifications to the Forest Stand Delineation and/or the Conservation Plan if necessitated by changes in the development or in the condition of the site.

ARTICLE III. RETENTION, TREE REPLACEMENT, AFFORESTATION AND REFORESTATION REQUIREMENTS

Sec. 10.5-21 Retention.

(a) The Forest Conservation Plan shall give priority consideration to the retention of existing forest cover and individual significant trees and to minimizing the need for reforestation and tree replacement. Except as otherwise provided herein, existing forest cover and individual trees shall be retained to the break-even point.

(b) Priority Retention Areas. Except as provided in subsection (c) below, [T]the following trees, shrubs, plants, and specific areas are considered priority for retention and protection and must be retained, protected, and left in an undisturbed condition. [unless it is demonstrated, to the satisfaction of the City Forester that reasonable efforts have been made to protect them and the proposed development activity cannot be reasonably altered:]

(1) Trees, shrubs and plants located in certain sensitive areas, such as the one hundred (100) year floodplain, streams and stream buffer areas, steep slopes, nontidal wetlands, and critical habitats;

(2) Contiguous forests;

(3) Priority forests as described in the State Forest Conservation Manual

(4) Rare, threatened, or endangered species;

(5) Trees associated with a historic site or designated as a champion tree;

(6) Certain champion trees, specimen trees or significant trees that are deemed rare, or of exceptional quality or size within the City of Rockville [and other large trees having a diameter greater than thirty (30) inches or seventy-five (75) percent of the diameter of champion trees];

(7) Forested stream buffers; and

(8) Forested park buffers.

(c) The City Forester may approve clearing within priority retention areas [[only]] if all of the following conditions have been met to the satisfaction of the City Forester:

(1) Priority forest has been retained to the break-even point for forest conservation or it has been demonstrated to the satisfaction of the City Forester in accordance with subsection (c)(4) of this section that clearing below the break-even point is warranted.. The break-even point shall be calculated using the entire tract area and all existing forest within the tract;

(2) On sites that do not contain priority forest equal to the break-even point, priority trees, as described in subsection (b) 4, 5 and 6 above, have been retained to the afforestation level;

(3) All afforestation, reforestation and tree replacement requirements are being met on-site; and

(4) Written justification signed by the applicant has been provided for clearing within priority retention areas or below the break-even point. Said justification must contain the following information:

a. How clearing within priority retention areas or below the break-even point is required to accommodate one or more of the following:

i. Right-of-way dedications

ii. Site access

iii. Utility connections

iv. Other City development standards

v. Site conditions and best design practices

b. Why the development cannot be altered to preserve priority retention areas. Cost, alone, or the desire not to alter preferred site design shall not be sufficient justification for not altering the development to preserve priority retention areas.

c. How all techniques for retention have been exhausted.

[(c)] (d) Non-priority retention areas. [Where approved by the City Forester, the forest retention requirements of this chapter may be satisfied in non-priority retention areas located according to an evaluation of forest stands for water quality, wildlife habitat, or other environmental objectives, provided that] On sites where there is insufficient priority retention area to satisfy the forest retention requirements, these requirements shall be satisfied through the retention of non priority areas provided that:

(1) Priority areas are protected in retention areas;

(2) A minimum [ten thousand (10,000)] five thousand (5,000) square foot protection zone is specified; [and]

(3) All critical root zone areas are included in the protection area; and

(4) The non priority areas provide one or more of the following benefits:

a. A vegetative buffer between two different land uses.

b. Wildlife habitat.

c. Water quality.

d. Reduces runoff from erosion.

e. Reduces flooding.

f. Protects steep slopes.

g. Provides areas for recreation and outdoor education activities.

(5) Clearing below the break-even point must be justified in accordance with the requirements of subsection c.(4) of this section.

Sec. 10.5-22. Tree replacement, reforestation and afforestation.

(a) Tree replacement and reforestation. [After every reasonable effort to minimize the cutting or clearing of trees is exhausted] After all efforts to maximize forest and tree preservation on-site, as required in Section 10.5-21, have been exhausted, the Forest Conservation Plan shall provide for tree replacement, afforestation and reforestation on-site as follows:

(1) Tree Replacement. Individual significant trees removed, whether within the forest or outside the forest, shall be replaced at the following rates with similar species:

Size of Significant

Minimum 21/2-Inch

Tree Removed (inches)	Caliper Tree Replacement (number of trees)
12-18 d.b.h.	1
greater than 18 -24 d.b.h.	2
greater than 24 d.b.h.	3

Replacement of a specimen or champion tree shall be at twice the above rate.

(2) Reforestation. For all existing forest cover measured to the nearest one hundred (100) square feet cleared on the tract area:

a. Reforestation shall be at the rate of one-quarter (1/4) of the forested area removed above the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located; and

b. Reforestation shall be at the rate of three times the forested area removed below the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located.

c. The Conservation Manual may provide for:

1. A credit against the area required to be reforested for:

i. Forested areas retained above the conservation threshold; and

ii. Individual significant trees retained outside of the forest retention areas, where seventy-five (75) percent of the critical root zone is preserved; and

iii. Street trees planted, not to exceed twenty-five (25) percent of the total reforestation requirement.

(b) Afforestation.

(1) Afforestation is not required for covered activities conducted:

a. On a tract with an area of less than forty thousand (40,000) sq. ft; or

b. On an existing single recorded residential lot of any size, provided that the lot is not subdivided and the covered activity does not result in the

cutting, clearing, or grading of more than forty thousand (40,000) square feet of forest.

c. On a linear project, as defined by the State Forest Conservation Technical Manual, provided that the activity does not result in forest clearing in excess of forty thousand (40,000) square feet.

(2) Where forest cover on a tract prior to development activity is less than the percentage of coverage established in subsection (c) of this section as the afforestation level for the zone in which the tract is located, the Conservation Plan shall provide for the afforestation of the tract to the applicable afforestation level.

(3) Forest cut or cleared below the required afforestation level, in accordance with Sec. 10.5-21, shall be replaced at a rate of three times the area removed and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

(4) The Conservation Manual may provide for

a. A credit against the area required to be afforested for:

(i) Individual significant trees retained outside of the forest retention areas, where seventy-five (75) percent of the critical root zone is preserved; and

(ii) Street trees planted, not to exceed twenty-five (25) percent of the total afforestation requirement.

b. Calculation of afforestation requirements based on less than the tract area where seventy-five percent (75%) of a tract area has previously been developed and no more than twenty-five percent (25%) of the tract area will be disturbed.

(c) Conservation thresholds and afforestation levels.

Applicable Zones	Conservation Threshold (percent)	Afforestation Level (percent)
R-E, R-S	30	20
R-90, R-75, R-60, R-150	25	15
R-40, R-30, R-20, RTH, RPR, R-H	15	15
C-1, C-2, I-1, I-2, I-3, I-4 O-1, O-2, O-3, TC-1,	15	15

TC-2, TC-3, TC-4, RPC

[[The afforestation level shall be the minimum amount of tree cover to be provided on site. Replacement trees, reforestation and afforestation can be used to satisfy this requirement.]] For planned developments the thresholds and levels are those applicable to the underlying zone, unless different thresholds and/or levels are expressly established by the Mayor and Council as part of the development approval.

(d) Minimum tree cover. The afforestation level shall be the minimum amount of tree cover to be provided on site, except in the TC and RPC zones, where the minimum tree cover shall be ten percent (10%) of the tract area. Replacement trees, reforestation, afforestation and existing trees can be used to satisfy tree cover requirements. Tree cover requirements shall be calculated and shown on the Forest Conservation Plan.

[[(d)]] (e) The Conservation Manual may provide for implementation of tree replacement, reforestation, and afforestation requirements in stages tied to phased development activity. Tree replacement, reforestation, and afforestation shall be accomplished within one (1) year or two (2) growing seasons after completion of the development project, as specified on the approved Forest Conservation Plan.

Sec. 10.5-23. Preferred sequence and priorities for tree replacement, reforestation and afforestation.

(a) Tree replacement, [R]reforestation and afforestation, where possible, shall be provided for in the following preferred sequence:

- (1) Selective clearing and supplemental planting on-site;
- (2) Onsite [afforestation or reforestation] planting using transplanted or nursery stock that is equal to or greater than one inch caliper;
- (3) Landscaping of areas on-site under an approved landscaping plan.
- [(4) Offsite afforestation or reforestation, using transplanted or nursery stock that is greater than one inch caliper;]

(b) The following are considered a priority for reforestation and afforestation, and are to be employed in the following preferred sequence:

- (1) Establish or enhance stream buffer areas;
- (2) Establish or enhance forested areas on 100-year floodplains;
- (3) Establish or increase connections between forested areas;

- (4) Establish or enhance forest buffers adjacent to critical habitats;
- (5) Stabilize steep slopes;
- (6) Increase the overall area of contiguous forest cover;
- (7) Enhance nontidal wetlands;
- (8) Use native plant materials;
- (9) Establish or enhance buffers between differing land uses or adjacent to highways or utility rights-of-way;
- (10) Establish or enhance forested buffers adjacent to parkland.

[(c) The primary objective is to accomplish reforestation and afforestation on-site. Where it is demonstrated to the satisfaction of the City Forester that the required reforestation, afforestation or on-site landscaping cannot be fully attained on-site, all or part of the required reforestation and/or afforestation may be made off-site within the same watershed in accordance with the following preferred sequence:]

[(1) On private space open to the public, including, but to limited to, common areas owned by homeowners' associations, except that reforestation and afforestation requirements may not be satisfied by trees planted on existing or proposed single-family residential lots;]

[(2) On private open space not open to the public]

[(3) On public parkland, subject to the payment of any required fee and other conditions set forth in the Conservation Manual.]

Sec. 10.5-24. Payment in lieu of reforestation and afforestation.

(a) If an applicant [demonstrates to the satisfaction of the City Forester] provides written justification demonstrating that tree replacement, reforestation or afforestation [on-site or off-site] cannot be accomplished on-site, the applicant may, with the approval of the City Forester, contribute to the City's Forest Conservation Fund an amount in lieu of tree replacement, reforestation or afforestation as set forth in the Conservation Manual. Said justification must contain the following information:

(1) How planting space is limited to accommodate one or more of the following:

i. Right-of-way dedications

ii. Site accessiii. Utility connectionsiv. Other City development standards

(2) Why the development cannot be altered to provide adequate planting space. Cost, alone, or the desire not to alter preferred site design shall not be sufficient justification for not altering the development to preserve priority retention areas.

(3) How the minimum tree cover requirement, as determined by the afforestation threshold, is being met on-site.

(b) The City may use funds from the City Forest Conservation Fund for those purposes authorized by the State Forest Conservation Technical Manual or the DNR. Funds shall not be used to plant or maintain trees on single-family residential lots.

ARTICLE IV. FOREST CONSERVATION, MAINTENANCE AND MANAGEMENT AGREEMENTS

Sec. 10.5-25. Short-term maintenance agreements.

(a) Where significant tree replacement, reforestation, or afforestation is required, the Final Forest Conservation Plan must include a binding five-year maintenance agreement as specified in COMAR 08.19.05.01 and the Forest Conservation Manual.

(b) The maintenance agreement shall provide for the maintenance of all trees planted in accordance with an approved Final Forest Conservation Plan to insure their protection and the satisfactory establishments of forests. The maintenance agreement shall require replacement plantings if survival rates fall below required standards as provided in the State's Conservation Manual and shall provide for access by representatives of the City to the afforested and reforested areas and other areas covered by the maintenance agreement. The maintenance agreement shall require eradication and control of exotic/invasive plants as listed by the Maryland Department of Natural Resources for the duration of the maintenance period.

(c) The applicant shall submit documentary evidence of the applicant's legal right to implement the proposed maintenance agreement.

(d) [[The maintenance period may be extended beyond the minimum time frame if the applicant fails to comply with directives of the City Forester regarding tree replacement, maintenance, invasive plant control or any other aspect of the approved Forest Conservation Plan.]] The maintenance period may be extended for additional growing seasons to ensure that:

(1) supplemental planting needed to meet forest conservation requirement becomes established;

(2) Effective exotic and invasive control is completed; and

(3) All aspects of the Approved Forest Conservation Plan have been satisfactorily met.

[[(d)]] (e) The maintenance agreement shall be accompanied by a bond issued by a surety company authorized to do business in the state, or an irrevocable letter of credit issued by a financial institution authorized to do business in the state, or such other security satisfactory to the City Manager and the City Attorney in an amount equal to the estimated cost of significant tree replacement, afforestation, and reforestation (or the amount of the contribution due the City Forest Conservation Fund) plus the estimated cost of forest and significant tree protection measures.

(1) The bond or other security shall run to the Mayor and Council and shall secure that the retention, tree replacement afforestation, reforestation and maintenance agreement are conducted and maintained in accordance with the approved Forest Conservation Plan or that the required contributions have been made to the City Forest Conservation Fund.

(2) The security shall be released upon the determination of the City Forester that all requirements of the Forest Conservation Plan and the short-term maintenance agreement have been fulfilled. The security may be partially released based on the successful implementation of phases of the Conservation Plan, if the maintenance agreement provides for said partial release.

(3) The security may be subject to forfeiture upon the failure of the applicant to comply with:

a. An administrative order pertaining to the approved Forest Conservation Plan;

b. Any element of the approved Forest Conservation Plan;

(4) The City Manager shall notify the obligee by certified mail, of the intention of the City to seek forfeiture of the security.

[[(e) The maintenance period may be extended upon the failure of the applicant to comply with (d)(3)a. and b. of this section.]]

Sec. 10.5-26. Long term agreement.

(a) The Final Forest Conservation Plan must include a long-term binding agreement as specified in COMAR 08.19.05.02 and in a form satisfactory to the City Attorney, providing for the preservation and protection of areas retained, afforested, or reforested and significant tree replacements consistent with an approved Final Forest Conservation Plan.

(b) A long-term protective agreement shall contain provisions for enforcement of the agreement, including provisions for the collection of attorney's fees incurred in such enforcement action.

(c) An applicant may satisfy the requirement for long-term protective agreement by executing a forest conservation and management agreement, as provided in the Annotated Code of Maryland, Tax-Property Article, Section 8-211.

(d) The long-term agreement shall be accompanied by those legal instruments necessary to effectuate such agreement, such as conservation easements, deed restrictions, covenants and other agreements.

(e) Any final subdivision plat or detailed development plan for the subject tract approved on or after January 1, 1993 shall show the areas held under such protective agreements.

ARTICLE V. INDIVIDUAL TREE REMOVAL

Sec. 10.5-31. Trees in public right-of-way.

Trees within the public-right-of-way are subject to the State's Roadside Tree Law, as currently set forth in the Natural Resources Article of the Annotated Code of Maryland §§ 5-401 through 5-406, and as subsequently amended.

Sec. 10.5-32. Trees on private property.

(a) This section does not apply to the removal of any significant tree located on a single-family residential lot that is not otherwise subject to the provisions of this chapter, except that the portion of a public right-of-way abutting a single family residential lot is subject to Section 10.5-31.

(b) It is unlawful for any person to remove any significant tree on private property, including trees located within utility easements, not otherwise covered by a Forest Conservation Plan, without first receiving a permit from the City Forester.

(c) The City Forester shall issue a permit if one of the following conditions exist:

(1) The tree is dead or dying, or in danger of falling;

(2) The tree is diseased, insect infested, or injured and cannot reasonably be restored;

(3) The tree constitutes a hazard to the safety of persons or threatens injury to property, including other trees.

(4) Removal of a tree is required for the maintenance of a utility. Unless otherwise prohibited by law, the City Forester may require that significant trees removed be replaced in accordance with the tree replacement rates set forth in section 10.5-23(a)(1), or that payment be made to the City's Forest Conservation Fund in lieu of significant tree replacement.

(d) If none of the conditions contained in subsection (c) exist, a permit may be issued only upon the condition that the tree removed be replaced in accordance with the tree replacement rates set forth in section 10.5-22(a)(1), or that payment be made to the City's Forest Conservation fund in lieu of significant tree replacement.

ARTICLE VI. ENFORCEMENT

Sec. 10.5-33. Inspections.

(a) The City Forester and other representatives of the City designated by the City Manager may enter property subject to this chapter for the purpose of inspection and enforcement. The timing and frequency of the inspections shall be at the discretion of the inspector, except that the following inspections must take place:

(1) Before any land disturbing activities occur on the tract;

(2) Following completion of all land disturbing activities and tree replacement, afforestation or reforestation covered by the Forest Conservation Plan; and

(3) At the end of the[two-year] time period covered by the maintenance agreement.

(b) No land disturbing activity shall commence and no bond or security shall be released until an inspection has been conducted.

Sec. 10.5-34. Penalties and other remedies.

(a) Pursuant to Section 6-1612 of the Natural Resources Article of the Annotated Code of Maryland, a fine in the amount of one thousand dollars (\$1,000.00) may be imposed for each violation of this chapter, including any violation of an approved Forest Conservation Plan which fine may be recovered in a civil action brought by the City. Each day a violation continues is a separate violation.

(b) In addition, the City shall have available to it all those remedies set forth in sections 1-9 and 1-11 of this Code.

(c) In addition to any of the foregoing remedies, the City, through its appropriate commissions, departments, agencies, or other representatives, may in response to any violation:

(1) Issue a stop-work order until the violation has been abated, and/or any fine or penalty imposed has been paid, except that a stop work order shall be lifted with respect to any fine or penalty from which an appeal has been filed pursuant to section 10.5-35 of this Chapter;

(2) Initiate forfeiture proceedings of security posted;

(3) Order corrective action to restore or reforest an area;

(4) Revoke a covered permit or covered approval issued conditioned on compliance with this chapter. Revocation of any covered permit or approval due to non-compliance with an approved conservation plan or any other violation of this chapter shall be conducted in the same manner as a revocation proceedings for other reasons;

(5) Assess an administrative penalty in the amount of thirty cents (\$0.30) per square foot of the area found to be in non-compliance with required forest conservation. Payment of such an administrative penalty shall become a condition of the covered permit or approval.

(d) When practical under the circumstances, the City Forester shall issue an administrative notice of violation requiring the violator to take corrective action and/or pay a fine and/or penalty within a certain period of time. The violator shall thereafter be given an opportunity to consult with the City Forester prior to any further enforcement action being taken. Service of the administrative notice shall be made on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address. If, after reasonable efforts, service cannot be made in the foregoing manner, it shall be made by posting the administrative notice at the site which is the subject of the covered permit or approval and by regular mail to the violator's last known address. If the violator is different from the applicant for the covered permit or approval, the copy of the administrative notice of violation shall also be served upon said applicant.

Sec. 10.5-35. Appeals.

Any person aggrieved by a decision of the City Forester pursuant to this chapter may appeal said decision to the Board of Appeals in the same manner as other decisions of administrative officials are appealed. Any person aggrieved by any decision of the Board of Appeals may appeal the same to the Circuit Court of Montgomery County. Such appeal shall be taken according to the Maryland Rules as set forth in Title 7, Chapter 200.

NOTE: [Brackets] indicate material deleted
Underlining indicates material added
Double underlining indicates material added after introduction
[[Double Brackets]] indicate material deleted after introduction

* * * * *

I hereby certify that the foregoing is a true and correct copy
of an Ordinance adopted by the Mayor and Council at its
meeting of July 16, 2007.

Claire F. Funkhouser, City Clerk